

Remarks

The Office Action dated November 20, 2009 failed to address Applicant's traversals regarding the impropriety of the § 103(a) rejections relying upon the combination of the primary Edholm '269 reference with the Swartz '694 reference due to the teaching away therein (and related lack of motivation) as applicable to the rejection of all claims. Accordingly, the Final Office Action failed to comply with the requirements of M.P.E.P. § 707.07(f) (as consistent with relevant law), which states, in pertinent part:

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

As applicable here, the Office Action failed to address Applicant's traversals, copied below for convenience:

Applicant further traverses all of the § 103 rejections because the cited references teach away from the Office Action's proposed combination. Consistent with the recent *KSR* decision, M.P.E.P. § 2143.01 explains the long-standing principle that a § 103 rejection cannot be maintained when the asserted modification undermines either the operation or the purpose of the main reference - the rationale being that the prior art teaches away from such a modification. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007) ("[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious."). Applicant submits that the combination would render the respective references inoperable because modifying the references to arrive at the Applicant's claimed invention would remove the references' respective configurations involving a central server or router, and replace those configurations with configuration at each of a plurality of respective IP telephony devices. This fundamental change would undermine the purposes of both the '269 and '108 references. Under M.P.E.P. § 2143.01, the rejections cannot be maintained. Moreover, as the instant Office Action has not addressed this traversal (as consistent with Applicant's June 30, 2009 Response), the uncontroverted record as it stands (for Appeal) cannot support either of the § 103 rejections.

In its response to the Final Office Action, Applicant noted this error and reiterated the improprieties of the § 103(a) rejections. The Advisory Action again ignored these traversals. Applicant's representative telephoned the Examiner on May 26, 2010, to discuss this matter, and understands that the Examiner should withdraw the finality of the Office

Action and address Applicant's traversals (thus also avoiding the need to file a § 1.181 petition).

In view of the above, Applicant believes that the finality of the Office Action dated November 20, 2009, is improper and should be withdrawn.

As also discussed during the above-referenced telephone conversation with the Examiner, Applicant further requests that the Examiner note the lack of correspondence to claim limitations directed to programming computer processor circuits of a plurality of remote telephony devices that communicate with control center. Specifically, the cited configuration in the '694 reference is limited to configuring a host services computer (asserted as the claimed control center), which provides functionality to remote devices. The assertions of correspondence rely upon allegations that the resulting "function" carried out by programming a host computer that hosts remote devices is the same as the function carried out by programming the remote devices themselves. This allegation is untenable. Correspondence cannot be established under § 103 simply because certain functions are related (*e.g.*, call forwarding), where those functions are carried out in a completely different manner than that claimed. These assertions are thus insufficient to establish correspondence under § 103 and Applicant requests that they be reversed.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

CRAWFORD MAUNU PLLC
1150 Northland Drive, Suite 100
St. Paul, MN 55120
651/259-2300

Dated: June 2, 2010

By: 

Robert J. Crawford
Reg. No. 32,122
Eric J. Curtin
Reg. No. 47,511